



UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT  
Issued to: Sydney Siegelman Z-192 22 0696

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2209

Sydney Siegelman

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 28 August 1979, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, after a hearing at New Orleans, Louisiana, on 16 July 1979, suspended Appellant's document for a period of four months upon finding him guilty of misconduct. The single specification of the charge of misconduct found proved alleges that Appellant, while serving as able seaman aboard SS AUSTRAL ENDURANCE, under authority of his Merchant Mariner's Document did, at or about 1210 on 1 July 1979, while said vessel was at sea, wrongfully commit an assault and battery without legal cause, provocation, or justification upon the person of one Phillip MOULIC, causing serious and severe bodily harm to him.

At the hearing, Appellant represented himself. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced into evidence the testimony of three witnesses, and two documents.

In defense Appellant testified and introduced into evidence two documents.

Subsequent to the hearing, the Administrative Law Judge entered a written decision in which he concluded that the charge and specification as set forth above had been proved. (In finding the charge proved, the Administrative Law Judge amended the original specification, which alleged the wrongful engagement in mutual combat, to conform to the proof of assault and battery adduced at the hearing.) He then entered an order of suspension for a period of four months.

The decision was rendered orally upon close of the hearing and the order was served on 29 August 1979. Appeal was timely filed on 31 July 1979, and perfected on 4 October 1979.

### FINDINGS OF FACT

On 1 July 1979, appellant was serving under authority of his Merchant Mariner's Document as able seaman aboard SS AUSTRAL ENDURANCE, then underway in the Pacific Ocean. At approximately 1145 that morning, without provocation or justification, an ordinary seaman named MOULIC struck Appellant on the crown of the head with a bottle as the former was departing the crew's mess. This caused a bloody laceration requiring immediate medical treatment which was administered to Appellant by the Chief Mate. At approximately 1210, Appellant entered the crew's lounge where he found MOULIC alone. Shortly thereafter Appellant repeatedly struck MOULIC with a blunt object, inflicting such deep and serious wounds to the latter's head that the vessel's course had to be changed to permit transfer of MOULIC to a hospital on Easter Island.

### BASES OF APPEAL

This appeal has been taken from the decision and order of the Administrative Law Judge. It is contended that (1) Appellant did not knowingly and with full knowledge of the consequences waive his right to be represented by counsel at the hearing; (2) Appellant was not given the opportunity to subpoena witnesses vital to his defense; (3) the evidence did not support a finding that Appellant attacked the victim with a white dogging wrench; and (4) that Appellant was not physically capable of representing himself or participating at the hearing.

APPEARANCE: Fields & Rosen, New York, New York, by Michael S. SELTZER, Esq.

### OPINION

#### I

One issue not raised by Appellant should be addressed. Initially, Appellant was charged with mutual combat. At the conclusion of the Coast Guard case in chief, the Administrative Law Judge advised Appellant that a prima facie case of assault and battery had been established. Appellant then presented his defense. In his written decision and order the Administrative Law Judge found assault and battery proved. Although it would have been preferable for the Administrative Law Judge to have amended the specification before the conclusion of the hearing [See, e.g., Decision on Appeal No. 2007], he committed no error in amending it afterwards. Appellant was given ample notice of those matters in issue and a fair opportunity to litigate them. Hence, the doctrine of Kuhn v. Civil Aeronautics Board, 183 F.2d 839 (D.C. Cir. 1950) applies. Cf., Decision on Appeal No. 2152 (notice which appellant ultimately did receive was "too late in the administrative

process").

## II

I reject Appellant's first contention. The Administrative Law Judge carefully explained to Appellant his right to "be represented here by professional counsel- a lawyer," [R.3] or "by anyone of your choosing, such as a union representative, a friend, or any competent person." R.4. It is quite clear that Appellant understood his right to counsel but voluntarily chose to proceed pro se. Appellant's contention on appeal is meritless and warrants no further consideration.

## III

Before the hearing commenced, Appellant requested that the Investigating Officer subpoena two members of the crew of AUSTRAL ENDURANCE. The Investigating Officer attempted to serve each, but neither was aboard the vessel. At the hearing, Appellant repeated his desire to have the two as witnesses and indicated that the presence of a third crew member also was desired. When it became apparent that none of the three would appear that day, Appellant elected to proceed with his defense without their testimony. None did appear at the hearing. However, written statements of the original two were admitted as evidence in Appellant's defense.

Among the rights accorded the person charged is that of having witnesses subpoenaed. 46 CFR 5.20-45(a)(2). Normally, denial of this right, without adequate justification, will require vacation of the order and remand. Decision on Appeal No. 1309. In this case however, the absence of the witnesses sought by Appellant cannot be said to have adversely affected him. None of the three sought by Appellant had seen, or otherwise had acquired any direct knowledge of, the incident in the crew's lounge. The two seamen whom Appellant originally requested had witnessed the incident on the mess deck only. The third crew member apparently had witnessed an entirely distinct incident some two years before. As is established quite clearly on the record, the only reason Appellant desired to have each testify was to establish MOULIC's propensity for unprovoked violence. But, within both the record and the initial decision, it is demonstrated amply that the Administrative Law Judge well recognized the fact of MOULIC's violent character. Hence, the live testimony of the three would not have added anything of substance to Appellant's defense, i.e., such testimony would have been merely cumulative. Cf. Decision on Appeal No. 1767 (No prejudicial error existed where testimony of subpoenaed witnesses who did not appear would have been only cumulative). For this reason, I reject Appellant's second contention.

#### IV

Appellant's third contention is absolutely devoid of merit. The Administrative Law Judge found as a fact that Appellant "did strike Phillip Moulic with a blunt object repeatedly in and about the head with such force and violence as to inflict deep multiple wounds into the head of Phillip Moulic." In the subsequent "opinion" portion of his initial decision, the Administrative Law Judge discussed evidence from which one reasonably might infer that a white dogging wrench was the "blunt object" used to inflict the wounds. The Administrative Law Judge never, however, found this inference to be fact.

#### V

There is no indication that Appellant did not comprehend fully the nature of the proceedings in which he took part, or that he was precluded by physical or mental impairment from adequately participating therein. In such circumstances, his contention must be rejected. See, Decision on Appeal No. 2038.

#### CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative character.

#### ORDER

The order of the Administrative Law Judge, dated at New Orleans, Louisiana, on 28 August 1979, is AFFIRMED.

R. H. SCARBOROUGH  
Vice Admiral, U. S. Coast Guard  
Vice Commandant

Signed at Washington, D.C., this 20 May 1980.

## INDEX

### Charges and Specifications

doctrine of Kuhn v. C.A.B. applicable

### Counsel

right to, adequately explained

right to, waived

### Hearings

counsel, proceeding without assistance of

nature of proceedings fully comprehended by person charged

### Subpoena

failure to effectuate service of to witnesses, not prejudicial

### Witnesses

absence of, not prejudicial

expected testimony of, cumulative